IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8734 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-Yes.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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SPL. LAND ACQUISITION OFFICER - Petitioner(s)
Versus
GHANSHYAM POPATLAL GANDHI - Respondent(s)

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Appearance :
GOVERNMENT PLEADER for Petitioner(s) : 1,
MR PH PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 29/06/2006

ORAL JUDGMENT

Heard leaned AGP Mr.L.B.Dabhi on behalf of the

petitioner and learned advocate Mr.P.H.Pathak for the respondent. In the present petition, petitioner has challenged the order passed by the Labour Court, Kalol in Misc. Application No.8 of 1995 in Reference No.42 of 1991 dated 4/7/1995. The Labour Court has passed award in Reference No.42 of 1991 dated 10/11/1994. The said award is ex parte against the petitioner. The Labour Court, Kalol has granted reinstatement with continuity of service with full back wages and consequential benefits. Against the said ex parte order, Misc. Application No.8 of 1995 was filed by the petitioner which has been decided by the Labour Court, Kalol wherein the Labour Court, Kalol has rejected the said application on 4/7/1995. This Court by order dated 11/10/1995 while issuing Rule, no stay was granted against the reinstatement but the back wages has been stayed. In view of the order passed by this Court on 11/10/1995, the respondent workman concerned has been reinstated in service by the petitioner in the year 1995. The workman concerned is in service since more than ten years.

The learned AGP Mr.Dabhi submitted that the Labour Court, Kalol has committed gross error in setting

aside ex parte award. He submitted that on merits, petitioner having good case because workman was appointed without following recruitment procedure and on temporary basis. He also submitted that no reasonable opportunity was given by the Labour Court before passing award against the petitioner. He also submitted that the delay of not more than three months even though same has not been condoned by the Labour Court without giving any cogent reason in support of the petition, additional affidavit has been filed by the petitioner and along with additional affidavit, certain documents are produced on record by the petitioner. He also submitted that advocate was engaged by the petitioner and in some of occasions, date was obtained by the advocate but because of the advocate not remained present, the Labour Court, Kalol has passed ex parte order. Therefore, he submitted that petitioner having good case on merits, therefore, order passed by the Labour Court in Misc. Application to be set aside.

The learned advocate Mr.Pathak appearing for the respondent submitted that before the Labour Court, sufficient opportunity was given to the petitioner but not availed by them. Though advocate was

engaged, even though advocate was not remained present. Therefore, after giving various opportunities to the petitioner, ultimately the Labour Court has rightly passed ex parte order. He also submitted that in pursuance to the ex parte order, the workman is already reinstated in service and he is working for about ten years, then now to disturb the award, which amounts to miscarriage of justice. He also submitted that Labour Court while dealing with the application, for setting aside the ex parte order, given cogent reason. He also submitted that petitioner has made incorrect statement before the Labour Court that no notice was served by them from the Labour Court. The said statement is not correct. That aspect has been discussed by the Labour Court in para 6. Therefore, he submitted that workman remained out of employment for more than four years because pendency of dispute which was referred in the year 1991. Therefore, no sufficient cause has been shown by the petitioner to set aside the ex parte order. Therefore, the Labour Court has rightly rejected the application filed by the petitioner.

I have considered the submissions made by both the

learned advocates. I have also perused the ex parte award passed by the Labour Court dated 10/11/1994 and also perused the order passed in Misc. Application dated 4/7/1995. I have also considered additional affidavit which has been filed by the petitioner in support of the petition. The additional affidavit filed by the Collector, Patan producing certain documents which are the correspondence between the parties were not on record before the Labour Court in Misc. Application. Therefore, said record cannot be taken into account while examining the order passed by the Labour Court in Misc. Application. The document which are produced along with the additional affidavit are not part of the record before the Labour Court therefore, cannot be taken into account while examining the matter. Affidavit in reply filed by the respondent workman wherein averment is made to the effect that no sufficient reasons has been shown to the Labour Court by the petitioner therefore, the Labour Court has rightly rejected the application.

In reply, the case of the respondent was that he was selected after following due process of law. The Labour Court has considered the application filed by the petitioner and also reply filed by the

respondent. Then the Labour Court has examined the documents as well as application and written statement filed by respective parties. The reason given by the Labour Court in para 6. The Labour Court has considered the original record of the reference where ex parte award was passed. In original record, notice issued by the Labour Court to the petitioner has been served to the petitioner vide Exh.3. The statement of claim was filed by the workman vide Exh.4 and produced before the Labour Court on 29/4/1991. The copy of the statement of claim was sent by the workman to the petitioner by R.P.A.D. The enclosure of R.P.A.D. was produced meaning thereby that petitioner has received the copy of the statement of claim from the workman. The petitioner has engaged advocate Mr.P.A.Rana who has requested to adjourn the matter by application vide Exh.40. Then again after a period of four months, second adjournment was taken on 19/8/1993 which was also granted by the Labour Court then vide Exh.16, the respondent workman was examined before the Labour Court. With a view to give chance to the petitioner, the cross-examination of the workman was adjourned. The workman was examined on 23/9/1993. Thereafter, matter was adjourned on 25/4/1994. Even though

petitioner was not remained present to cross examine the workman concerned. Therefore, right of petitioner to cross-examine was closed on 25/4/1994. Thereafter, on 24/8/1994 oral evidence of the petitioner was closed and matter was kept for order on 16/9/1994. Then ex parte order was passed on 10/11/1994. In light of these observations made by the Labour Court in para 6, sufficient opportunity was given by the Labour Court to the petitioner. Even though, advocate was engaged by the petitioner, no sufficient care was taken by the advocate to remain present on each date of hearing. So that is a lapse/inaction on the part of the advocate, not to remain present which ultimately resulted into ex parte order. On behalf of petitioner, no concerned officer was remained present and petitioner has not inquired from the advocate, what happened to the matter. So, the petitioner has not made any efforts to know the proceedings before the Labour Court, Kalol. When the matter was given to the advocate, no care has been taken by the petitioner. Thereafter, the Labour Court has considered that more than four years period has been passed and no efforts were made by the petitioner to remain present, even though matter was adjourned time and again by the Labour

Court. Therefore, ultimately the Labour Court has come to the conclusion that opportunities were given to the petitioner but not availed by them. The reason for not remaining present was given that officer concerned was transferred but that fact was not believed by the Labour Court on the ground that no details were submitted that who was the officer concerned to remain present, was transferred to which place and who was officer, whom the charge was given. Thereafter, another defence was raised for condoning the delay is that on 20/2/1995 the election of assembly and then on 11/3/1995 counting of vote, therefore, they were not able to file application for setting aside the ex parte order. The Labour Court observed against this contention that after 11/3/1995, up to 15/3/1995, all the proceedings of election of assembly was over and even after that no such application was filed by the petitioner and application was filed on 2/5/1995. Therefore, the Labour Court has come to the conclusion that this being not sufficient cause and no justification to condone the delay in filing application for setting aside the ex parte award. The Labour Court also considered that in case if now ex parte award is set aside, it will also cause injustice to the workman

who was continued in attending the Court for more than four years and ultimately the workman will lose the faith in the Court. The workman and his family ultimately sufferer because of negligence on the part of the petitioner. In view of the reasoning as referred above, given by the Labour Court, Kalol, according to my opinion, the Labour Court has rightly appreciating the facts on record. The facts which are stated in additional affidavit along with certain documents are not on record before the Labour Court therefore, same cannot be considered by this Court while examining the order passed by the Labour Court, Kalol as given Misc. Application. In respect to the negligence on the part of the advocate, while representing the petitioner not remained present before the Labour Court, the case of Rafik and another v. Munshilal and another, reported in AIR 1981 SC 1400 is referred. In this case, the Hon'ble Apex Court has considered that because of negligence on the part of the advocate party should not have to suffer. This decision has been distinguished by the Hon'ble Apex Court in a subsequent decision in the case of Salil Dutta v. T.M. & M.C. Private Ltd, reported in JT 1993 (4) SC 528 on the ground that it was a case of villager where he was not aware about

the legal proceedings but in case of company or corporate body where number of persons are working those who are concerned with the legal proceedings. In such circumstances, negligence of the advocate is also to be considered the negligence and carelessness on the part of the concerned company or corporate body. The relevant observations made in Salil Dutta's case are as under:

> “Para 5. Since the Judgment under appeal is exclusively based upon the decision of this Court in Rafiq, it is necessary to as certain what precisely does the said decision say. The appellant Rafiq had preferred a second appeal in the Allahabad High Court through an advocate. His advocate was not present when the second appeal was taken up for hearing with the result it was dismissed for default. The appellant then moved and application to set aside the order of dismissal for default which was dismissed by the High Court. The correctness of the said order was questioned in this Court. The matter came up before a Bench comprising D.A.Desai and Baharul Islam, JJ. D.A.Desai, J. speaking for the Bench observed thus:

'The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will took after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening tin the High Court with regard to his appeal nor is he to act as a watch-dog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.'

Para 6. It was then argued by the counsel for the respondent in that appeal that a practice has grown up in the High Court of Allahabad among the lawyers to remain absent when they did not like a particular Bench and that the absence of the appellant's advocate in the High Court was in accordance with the said practice, which should not be encouraged. While expressing no opinion upon the existence or justification of such practice, the learned Judge observed that if the dismissal order is not set aside “the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented,” and then made the following further observations:

'The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanor of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely

because his chosen advocate defaulted.'

Para 7. The question is whether that principle of the said decision comes to the rescue of the defendant respondent herein. Firstly, in the case before us it was not an appeal preferred by and outstation litigant but a suit which was posted for final hearing seven years after the institution of the suit. The defendant is a private limited company having its registered at Calcutta itself. The persons incharge of the defendant-company are not rustic villagers nor they are innocent illiterates unaware of Court procedures. Prior to the sit coming up for final hearing on 9th June, 1988 the defendant had filed two applications whereupon the Court ordered that they will be considered at the time of the final hearing of the suit. The plaintiff's case no doubt is that the said applications were part of delaying tactics being adopted by the defendant-tenants with a view to protract the suit. Be that as it may, the defendant thereafter refused to appear before the court. According to the defendant, their advocate advised them that until the

interlocutory applications filed by them are disposed of, the defendant need not appear before the Court which means that the defendants need not appear at the final hearing of the suit. It may be remembered that the Court proposed to consider the said interlocutory applications at the final hearing of the suit. It is difficult to believe that the defendants implicitly believed their advocate's advice. Being educated businessmen they would have known that non-participation at the final hearing of the suit would necessarily result in an adverse decision. Indeed we are not prepared to believe that such an advice was in fact tendered by the advocate. No advocate worth his salt would give such advice to his client. Secondly, the several contradictions in his deposition which are pointed out by the Division Bench in the impugned order go to show that the whole story is a later fabrication. The fallowing are the observations made in the Judgment of the Division Bench with respect to the conduct of the said advocate: “we found that the said learned advocated conducted the proceedings in a most improper manner and that his absence on 10th

June, 1988 and on subsequent date was not only discourteous but possibly a dereliction of duty to his client... the learned advocate had forgotten his professional duty in not making inquiry to the Court as to what happened on 10th, 11th and 13th June, 1988.... the learned advocate acted in a most perfunctory manner in the matter and the learned advocate dealt with the matter in a most unusual manner. We have also found that the said learned advocate had made serious contradiction in the deposition before the Court below. The learned advocate in his deposition stated that he did not file an application for adjournment on 9th June, 1988. But from the record it was evident that it was on the basis of the application filed on 9th June, 1988, the case was adjourned for cross-examination of the witnesses whole examination was called on the next date.' T;;;he above facts stated in the deposition of the advocate show that he indeed made an application for adjournment on the 9th June, 1988 to enable him to cross examine the witnesses on the next date. Therefore, his present stand that he advised his client not to participate in the trial from and including 9th

June, 1988 onwards is evidently untrue. We are, therefore, of the opinion that the story set up by the defendant in his application under Order 9 Rule 13 is an after-though and ought not to have been accepted by the Division Bench in its order dated 3rd March, 1992 – more particularly when it had rejected the very case in its earlier Judgment dated 8/7/1991.

Para 8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. The party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanor of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be

understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the Court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear- they chose to non-cooperate with the court. Having adopted such a stand towards the Court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory

which cannot be accepted and ought not to have been accepted.”

In light of aforesaid observation in facts of present case, here the petitioner is Special Land Acquisition Officer having legal department or to have the person those who are connected with the legal proceedings. In such circumstances, the negligence was on the part of the petitioner because petitioner has not taken sufficient care to remain present before the Labour Court as and when the matter was fixed for hearing and not inquired from the advocate, what happened to the pending matter. So, in fact there was a negligence on the part of the petitioner about the case, pending before the Labour Court.

Therefore, considering these facts, according to my opinion, the Labour Court has not committed any error which required interference by this Court while exercising the powers under Article 227 of the Constitution of India. Hence, there is no substance in the petition. Rule Discharged. Accordingly, petition is dismissed. Interim relief, if any, stands vacated forthwith.

(H.K.RATHOD, J.)

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